

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

STATE OF TENNESSEE v. LISA McCROY STRICKLAND

Appeal from the Circuit Court for Blount County
No. C-16813 David Reed Duggan, Judge

No. E2008-02673-CCA-R3-CD - Filed December 2, 2009

The Defendant, Lisa McCroy Strickland, appeals the trial court's order revoking her probation for her Class E felony conviction for forgery. The State has moved this court to affirm the trial court's order pursuant to Tennessee Court of Criminal Appeals Rule 20. The State's motion is granted, and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee, for the appellant, Lisa McCroy Strickland.

Robert E. Cooper, Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

According to the October 29, 2007 judgment, the Defendant was given a two-year, Range I sentence. The Defendant was ordered to serve twenty days in the county jail, with the balance to be served on supervised probation. After probation violation warrants were served, a hearing was held at which the Defendant's probation was revoked, and she was ordered to serve the balance of her sentence. The Defendant was released from jail on May 20, 2008, and her probation was ordered transferred to Community Corrections. After another probation violation and a hearing, the Defendant's probation on Community Corrections was revoked, and she was ordered to serve the balance of her sentence. The Defendant was again released from jail and placed on probation on June 17, 2008. A probation violation warrant issued on September 26, 2008, alleging that the Defendant had not obtained employment since her release from jail, that she no longer resided at the address she had provided, that she had not reported to her probation officer since July 14, 2008, and that she owed court costs and probation fees.

At the revocation hearing, the Defendant's probation officer testified about the Defendant's noncompliance with the terms of probation. He said the Defendant first reported to another probation officer, who had filed a probation violation warrant for a variety of violations, including a positive drug screening and failure to report a new arrest. He said the Defendant was furloughed from jail in February 2008, to attend Buffalo Valley Treatment Center. He said her probation was transferred to Community Corrections on May 20, 2008, after her completion of the treatment program. He said she was released on determinate release on June 17, 2008. He said that a second probation officer met with the Defendant once or twice and that she was transferred to his caseload. He said the Defendant first reported to him on July 14, 2008, but she reported without the required fees, without having obtained employment, and without "any required compliance." He said that either the Defendant or her mother called him on July 25, 2008, and stated that one of them would bring the required fees. He said that he had not seen the Defendant since that time and that her whereabouts had been unknown until she was arrested on the latest probation violation warrant. He said he believed the Defendant could not be supervised by the Board of Probation and Parole because the Defendant's probation officers all witnessed the Defendant's non-compliance with the terms of her probation. He said the Defendant had not obtained new criminal charges since her release on determinate release.

The Defendant testified that she agreed with the probation officer's testimony. She said she obtained employment with a cleaning company on July 20 or 22, 2008, about a month after her last release from jail. She said that she had been incarcerated for seven and one-half months and that she had been furloughed to Buffalo Valley Treatment Center. She said that after her release from jail, she lived rent-free with a friend. She said she rescheduled her first meeting with her probation officer, and she told him someone would bring money toward her court costs and probation fees. She said she did not report to her probation officer at her next scheduled appointment because she misunderstood the date on which it had been scheduled. She said she thought her mother took her July fees to the probation officer. She said she discovered about two weeks later that her mother had an accident and did not take money to the probation officer. She said she told her probation officer on the Friday following the date she was hired that she had a job. She said she had lost her job by August 10, 2008. She said her mother told her the probation officer had called and had stated she missed an appointment. She said that because she knew that her probation officer had probably filed a violation warrant, she did not go to her August appointment. She said she did not call her probation officer or attempt to see him. She said she did not know that the probation violation warrant was not filed until September 26, 2008, or that if she had contacted her probation officer before then, he might not have filed the warrant. She said she moved to her mother's house to care for her eighteen-year-old daughter, who had been injured in a car accident. She said that she no longer had a vehicle but that she possessed a valid driver's license. She said the death benefits she had received were terminated when she was incarcerated, but she was trying to have them reinstated. She said she had been unable to obtain employment. She said she had a history of drug problems but she had never been convicted of a drug offense. She said she did not commit the forgery offense to obtain money to purchase drugs. She said she was not intoxicated when she committed the offense. She said that her treatment at Buffalo Valley Treatment Center was successful, that she had

not used drugs since her release in June 2008, and that she would test negative for drugs. She said her failure to pay court costs and to report to her probation officer were not a result of drug addiction. She said she could complete probation. She said she had been accepted at The Refuge, a halfway house in Maryville, and at another halfway house in Oak Ridge. She said she had no financial assistance after her release from jail in June 2008. She said the halfway house programs would help her rehabilitate and return to society as a functioning adult. She said her daughter had been released from therapy and no longer required help.

On cross-examination, the Defendant testified that she had used drugs after completing the Buffalo Valley treatment program but that she had not used drugs after her June 2008 release from the jail. She agreed she had committed three probation violations since the date of the offense, which was a little over a year before the date of the revocation hearing. She agreed her probation had twice been revoked. She acknowledged that she missed an appointment with her probation officer. She said she thought the appointment had been rescheduled for the following Monday, but she agreed she did not report on Monday. She acknowledged that she had made no payments toward court costs or probation fees. She said she tested positive for cocaine two days after being released from Buffalo Valley Treatment Center. She agreed that she had tested positive for cocaine twice before and that her probation had been revoked. She agreed she had violated her probation in nearly every manner possible.

The trial court found that the Defendant had violated her probation for a third time and that her suspension of sentence should be revoked. The court granted appropriate jail credit and ordered her to serve the remainder of her sentence.

A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e). If a trial court revokes a defendant's probation, its options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c); -310; see State v. Hunter, 1 S.W.3d 643, 648 (Tenn. 1999). The judgment of the trial court in a revocation proceeding will not be disturbed on appeal unless it appears that there has been an abuse of discretion. See State v. Williamson, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981).

The record in the present case reveals that the trial court did not abuse its discretion in revoking the Defendant's probation. The violations were undisputed. Despite the Defendant's claim that she was in a better position to comply with the terms of her probation, the court was within its discretion in revoking probation where there had been repeated failure to comply with the terms of her probation in the past. The court noted that the Defendant's probation had twice been revoked and that each time the Defendant was returned to probation, she violated its terms.

The State's motion for affirmance pursuant to Rule 20 is granted because the opinion provides no precedential value. Tenn. Ct. Crim. App. R. 20. The proceeding occurred before the trial court without a jury, the action was not a determination of guilt, the evidence does not

preponderate against the trial court's findings, and no error of law is apparent on the record. See Tenn. Ct. Crim. App. R. 20(1)(a), (2). The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

JOSEPH M. TIPTON, PRESIDING JUDGE